No. 83-1351

In the Supreme Court of the United States

OCTOBER TERM, 1983

ANDRES ALONSO, JR., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court properly dismissed this suit by petitioner, an attorney seeking to recover currency seized from a courier by DEA agents that petitioner contends was to be delivered to him as a retainer fee, because petitioner refused during discovery to disclose the identity of the client who allegedly paid the fee.

2. Whether petitioner is entitled to recover the currency, which was in any event subject to forfeiture pursuant to 21 U.S.C. 881 because it was the proceeds of a narcotics operation, on the ground that DEA agents violated the Fourth Amendment when they seized it from the courier.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A3) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 31, 1983, and a petition for rehearing was denied on November 16, 1983 (Pet. App. B1). The petition for a writ of certiorari was filed on February 13, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On February 12, 1982, at Los Angeles International Airport, agents of the Drug Enforcement Administration (DEA) observed passengers arriving from Miami. They noticed one man looking around more than usual at other men and appearing nervous. They then observed him go down the escalator and out to the street, carrying only a

briefcase. He looked around at curbside, walked back inside to the baggage area, and then went back outside to a taxi stand and asked to be driven to an airport motel. Marcello Dep. 8, 15-16, 22.[1]

Agent John Marcello walked up to the man, identified himself as a DEA agent, and asked if he would mind talking to him, stating that he was not required to answer questions. The man, Nelson Valencia, said he had no objection to cooperating and, in response to Marcello's request, produced his airline ticket and a Louisiana driver's license. Valencia said he was a resident alien born in Colombia and residing in Miami. When Marcello asked to see his "green card," Valencia replied that he had left it in Miami. Valencia stated that he had only the briefcase as luggage and that he was not sure how long he would stay in Los Angeles, perhaps a couple of days. Marcello Dep. 24-25.

Marcello advised Valencia that he suspected him of being a drug courier, which Valencia denied. Marcello told Valencia that he would like to look in his briefcase but that Valencia did not have to give him permission to do so. Marcello Dep. 25-26. Valencia then opened the briefcase, revealing two large mailing envelopes inside (*id.* at 19-20, 26). Each envelope was labeled: "Para Entregar Al: Licenciado Alonso [for delivery to: Attorney Alonso], Tel: Res. 383-0771 Ofic 681-1282" (Exhs. 3 & 4; Marcello Dep. App.). The other agent, Darnell Garcia, asked Valencia what was inside the envelopes, and Valencia replied that they contained papers for an attorney (Marcello Dep. 27-28). Garcia asked if the agents could open the envelopes, and Valencia said that they could. Marcello then warned Valencia that if there was cocaine inside, they would arrest him. Valencia replied: "There's no cocaine. Go ahead and

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[1] "Marcello Dep." refers to the deposition of DEA Agent John Marcello taken by petitioner in this case.

open them." The agents did not find drugs inside the envelopes, but they did find approximately $150,000 in currency. *Id.* at 29-30.

Marcello then asked Valencia if he would mind coming to the DEA office at the airport, and Valencia agreed (Marcello Dep. 33). There Valencia explained to the DEA agents that he had received the envelopes from two men — one a Colombian and the other an American — whom he had met in a Miami bar four days earlier. The men had offered Valencia $200 plus expenses to travel to Los Angeles to deliver some papers. Valencia stated that the two men subsequently gave him two packages on February 11, 1982 late at night in the parking lot of a shopping center and instructed him to check into an airport motel and call the telephone numbers on the outside of the envelopes. Marcello Dep. 42-43.

Valencia told the agents that considering the amount of money in the envelopes, it must be drug-related or for some other illegal purpose, and he said he did not want the money back. Valencia also said he knew nothing about the man, petitioner Alonso, whose name appeared on the outside of the envelopes, and he refused the agents' request to call the numbers written on the envelopes to learn what his instructions were. Marcello Dep. 43-46. Valencia was free to leave during the entire period of his encounter with the agents (*id.* at 77).

A DEA agent then called one of the numbers on the envelopes, reached petitioner, and, identifying himself as Nelson Valencia, asked what he should do with the packages (Marcello Dep. 50-52). In response, petitioner came to the airport and was met there by the DEA agents, who identified themselves as such. Petitioner accompanied the agents to the DEA office at the airport, where he explained that he was expecting a check from a client as a retainer for work he planned to perform along with attorney William

Sheffield. The agents told petitioner that they had spoken with someone who had come from Miami with some money that appeared to be intended for him, but that it was not in the form of a check. They asked petitioner how much money he was expecting, and he answered that he was not sure but that it could be anywhere between $100,000 and $650,000 (*id.* at 55-65). When Marcello asked petitioner if he wanted the $150,000, petitioner answered that he did not (*id.* at 67).[2]

2. a. Petitioner subsequently filed the instant civil action seeking to require the government to turn the $150,000 over to him and also seeking damages for alleged constitutional violations in connection with the seizure of the currency. Petitioner filed an interlocutory motion in the civil action for "return" of the currency, but that motion was denied because factual issues remained to be resolved at trial. 10/12/82 Tr. 7-8.[3] At his deposition, petitioner refused to answer a number of questions, including one asking for the identity of the client who petitioner asserted had sent him the money, claiming that this information fell within the attorney-client privilege. Although petitioner states (Pet. 10-11) that he thereafter submitted an in camera declaration in which he answered others of the questions, he persisted in his refusal to identify the client. The district court concluded that whether petitioner was the owner of the $150,000 he sought to acquire was a material issue in the case, and it therefore granted the government's motion to dismiss the complaint as a sanction for petitioner's refusal to submit to discovery on that material issue (Pet. App. C1-C3).

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[2]In his declaration in the related forfeiture action (see page 6, *infra*), Marcello stated (Decl. 6) that petitioner said that if the money was "illegal" he did not want it.

[3]Although petitioner styled his motion as one for "return" of property, in fact the currency was intercepted by the DEA agents before it was delivered to petitioner.

b. The court of appeals affirmed the district court's dismissal of the complaint (Pet. App. A1-A3). The court observed that the identity of an attorney's client ordinarily does not fall within the attorney-client privilege and held that petitioner had failed to show that his client's identity fell within an asserted exception to that rule permitting the client's name to be withheld where there is a "strong probability" that disclosure of the client's identity would implicate him in the very criminal activity for which legal advice was sought (*id.* at A2). It is this decision of the court of appeals that petitioner asks the Court to review here.

3. In the meantime, the United States had instituted an action pursuant to 21 U.S.C. 881(a)(6) for forfeiture of the seized currency as the proceeds of transactions in illegal drugs. *United States* v. *$149,345 U.S. Currency*, No. CV 82-2518-FW (C.D. Cal.). On September 7, 1983, the government moved for entry of judgment in the forfeiture proceeding, supported by declarations establishing that there was probable cause to believe that the currency belonged to one Hipolito Rivera-Ramirez and was the proceeds of illegal drug-trafficking.[4] A declaration by DEA Special Agent Larry Lyons recounted that DEA agents had executed search warrants in September 1981 in Van Nuys, California that uncovered a "huge Colombian cocaine trafficking organization." The agents seized 114 pounds of pure cocaine, almost $2,000,000 in cash, and documents and narcotics ledgers. Lyons' subsequent investigation and examination of the organization's records established that approximately $73,000,000 had been received from the sale of approximately 1328 kilograms of cocaine during the first

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[4]The district court in the forfeiture proceeding, on March 4, 1983, previously had granted the government's motion to strike a claim by petitioner and his associate to the currency because of their refusal once again to identify the client who they asserted had sent petitioner the money.

nine months of 1981 and that the sole source of the organization's income was the sale of cocaine. Lyons stated that Rivera-Ramirez was the leader of the group and that all members of the group were indicted and either pleaded guilty or were convicted in *United States* v. *Rivera-Ramirez*, CR-81-908-TJH (C.D. Cal.). Lyons Decl. 2-3.

DEA Special Agent Marcello filed a declaration in which he stated that the currency Valencia was carrying had been wrapped in rubber bands in mixed denominations between $5 and $100 and that 47 bills had numbers written on them, seven had names written on them, and two had what appeared to be airline baggage tag numbers. Marcello explained that in his experience, currency seized in narcotics-related matters exhibits these common characteristics. Marcello Decl. 7. Marcello also stated that a Los Angeles criminal defense attorney had told him on April 16, 1982, that petitioner was then representing Rivera-Ramirez and that he had heard that the DEA airport group had seized $150,000 of "Hipolito's money" a few months earlier (*id.* at 8).

Assistant United States Attorney Malinsky submitted a third declaration. He stated that Rivera-Ramirez had pleaded guilty to two counts of the indictment in the criminal case on November 16, 1981, and was sentenced on January 19, 1982 to consecutive 15-year sentences and a fine of $25,000 on those counts. Malinsky also stated that records at the federal penitentiary at Lompoc showed that petitioner had visited Rivera-Ramirez on February 16, 1982 (four days after the airport incident) to facilitate an attorney-client relationship and that on that date Rivera-Ramirez signed a form consenting to the substitution of petitioner and William Sheffield as his counsel in the criminal case. Petitioner and Sheffield subsequently filed a motion on Rivera-Ramirez's behalf seeking to withdraw his guilty plea, but the motion was denied. Malinsky Decl. 1-3.

Petitioner appealed the denial on behalf of Rivera-Ramirez, but the court of appeals affirmed (*United States* v. *Rivera-Ramirez*, 715 F.2d 453 (9th Cir. 1983)), noting, inter alia, that the evidence recited at the guilty plea hearing established that Rivera-Ramirez was involved in a substantial cocaine distribution organization and had travelled to Miami to obtain cocaine (*id.* at 458). Petitioner recently filed a petition for a writ of certiorari on behalf of Rivera-Ramirez seeking review of the Ninth Circuit's decision on withdrawal of the guilty plea (*Rivera-Ramirez* v. *United States*, No. 83-1457), which is currently pending.

On the basis of the government's submission and supporting declarations in the forfeiture case, the district court entered judgment in favor of the United States in the forfeiture case on September 22, 1983. Petitioner has appealed that judgment to the Ninth Circuit (Nos. 83-5707, 83-5881 and 83-6303), and oral argument was held on April 4, 1984.

ARGUMENT

1. Petitioner contends (Pet. 29-36) that the court of appeals erred in holding that the identity of the client who he alleges paid him the $150,000 as a retainer fee was not protected by the attorney-client privilege and that the court of appeals therefore erred in affirming the district court's dismissal of the instant civil action seeking possession of the currency and damages. This issue would now appear to be largely academic, because after the Ninth Circuit rendered its decision in this case, the district court entered judgment for the United States in the forfeiture action, thereby confirming title to the $150,000 in the United States. See page 7, *supra*. That judgment of forfeiture was amply supported by evidence that the money in fact had been sent by Rivera-Ramirez and was the proceeds of the latter's illegal drug operations. Thus, even assuming that Rivera-Ramirez caused the money to be sent to petitioner as payment of a retainer fee, rather than merely addressing the envelopes to

petitioner in the course of transmitting funds in connection with his cocaine operation or for other reasons, petitioner would not be entitled to have the currency turned over to him in this civil action. The currency was intercepted by the DEA agents before it was delivered to petitioner. As a result, the United States' right to forfeiture of the currency clearly had priority over any claim petitioner might have to the currency as an anticipated retainer fee. If Rivera-Ramirez actually owes petitioner $150,000, petitioner's recourse now lies against Rivera-Ramirez (who attempted to pay him with currency that was subject to forfeiture), not the United States.

2. In any event, the courts below correctly rejected petitioner's claim in the instant case that the identity of his client was privileged. We recently filed briefs opposing certiorari in two other cases in which the Sixth Circuit likewise rejected a claim that the identity of a client was protected by the attorney-client privilege. See *Doe* v. *United States*, petition for cert. pending, No. 83-1309; *Durant* v. *United States*, petition for cert. pending, No. 83-1468. For the reasons stated more fully in our briefs in opposition in those cases, there is no occasion for the Court to grant review on that issue here.[5]

a. The attorney-client privilege protects only confidential communications made by the client to the lawyer for the purpose of obtaining legal advice. *Upjohn Co.* v. *United States*, 449 U.S. 383, 389-390 (1981); *Fisher* v. *United States*, 425 U.S. 391, 403 (1976). The identity of the client does not fall within the scope of the privilege, because the mere identification of a person as the client of a lawyer "is preliminary, in its own nature, and establishes only the existence of the relation of client and counsel, and, therefore, might not necessarily involve the disclosure of any

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[5]We have furnished petitioner with copies of our Briefs in Opposition in *Doe* and *Durant*.

communication arising from that relation after it was created." *Chirac* v. *Reinicker*, 24 U.S. (11 Wheat.) 280, 295 (1826). Only where identification of the client in turn would "necessarily involve the disclosure of any communication" made by the client is the lawyer privileged from making that identification. See *In re Osterhoudt*, 722 F.2d 591, 593-594 (9th Cir. 1983); *In re Witnesses Before the Special March 1980 Grand Jury*, 729 F.2d 489, 491-495 (7th Cir. 1984). Petitioner does not contend that the mere disclosure of his client's identity would have the effect of revealing the substance of any confidential communications the client made to him. It necessarily follows that the courts below correctly rejected petitioner's invocation of the attorney-client privilege and properly imposed the sanction of dismissal for petitioner's refusal to disclose that information.

b. Petitioner nevertheless contends (Pet. 32) that he should be excused from disclosing the identity of his client because to do so, he asserts, might incriminate the client. This amounts to nothing more than a contention that the attorney may vicariously assert his client's Fifth Amendment privilege, a proposition this Court rejected in *Fisher*, 425 U.S. at 396-401. As we explain in our Brief in Opposition in *Doe* (83-1309 Br. in Opp. 8-12) and *Durant* (83-1468 Br. in Opp. 10-11), application of the attorney-client privilege depends not on whether the information the lawyer is required to disclose might incriminate the client (as under the Fifth Amendment), but rather on whether the lawyer is asked to reveal a confidential communication (whether or not the communication is incriminating). See also *In re Witnesses Before the Special March 1980 Grand Jury*, 729 F.2d at 491-492; *In re Osterhoudt*, 722 F.2d at 593-594; *In re Slaughter*, 694 F.2d 1258, 1260 (11th Cir. 1982); *In re Grand Jury Empanelled February 14, 1978 (Markowitz)*, 603 F.2d 469, 473 & n.4 (3d Cir. 1979); *Colton* v. *United States*, 306 F.2d 633, 637 (2d Cir. 1962), cert. denied, 371 U.S. 951

(1963). Indeed, Cal. Evid. Code § 954 (West Cum. Supp. 1984), upon which petitioner relies (Pet. 31), explicitly defines the attorney-client privilege as entitling the lawyer to refuse to disclose "a confidential communication between client and lawyer" (Pet. 5). Petitioner's claim of a broader privilege applicable even where confidential communications would not be disclosed therefore is without merit.[6]

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[6]In support of his contention that he is privileged from disclosing his client's identity, petitioner relies (Pet. 32-33) on four prior Ninth Circuit decisions, including *Baird* v. *Koerner*, 279 F.2d 623 (1960), as well as the Seventh Circuit's decision in *Tillotson* v. *Boughner*, 350 F.2d 663, 666 (1965), which followed *Baird* on essentially identical facts. However, in their recent decisions in *In re Osterhoudt* (722 F.2d at 593-594) and *In re Witnesses before the Special March 1980 Grand Jury* (729 F.2d at 492-495), the Ninth and Seventh Circuits, respectively, reexamined *Baird* and *Tillotson* and their other prior precedents and concluded that they actually rested on the fact that confidential communications would have been revealed if the client's identity were disclosed.

Petitioner also relies (Pet. 32) on *In re Grand Jury Proceedings (Jones)*, 517 F.2d 666 (5th Cir. 1975). However, as we explain in our Brief in Opposition in *Durant* (83-1468 Br. in Opp. 15-17), the lawyers in *Jones* based their claim of privilege on the fact that confidential communications would have been revealed if the clients' identities were disclosed (517 F.2d at 668-669), and the Fifth Circuit in *Jones* repeatedly referred to the matter of the disclosure of confidential communications (*id.* at 672-673, 674-675). *Jones* therefore cannot be read to abandon the principle that the attorney-client privilege protects only confidential communications. The remaining decision relied upon by petitioner (Pet. 32) is that of a panel of the Fifth Circuit upholding a claim of privilege for the client's identity in *In re Grand Jury Proceedings (Pavlick)*, 663 F.2d 1057 (1981). However, the panel in *Pavlick* quoted a passage in *Jones* which in fact links the claim of privilege for a client's identity to the previous disclosure of confidential communications. 663 F.2d at 1061 (quoting 517 F.2d at 674). Moreover, the en banc Fifth Circuit subsequently reversed the panel and rejected the claim of privilege in *Pavlick* (680 F.2d 1026 (1982)), and as we explain in our Brief in Opposition in *Durant* (83-1468 Br. in Opp. 17-19), *Pavlick* likewise should not be read to abandon the nexus to the disclosure of confidential communications that the opinion in *Jones* indicates is required for invocation of the privilege.

c. This would not in any event be an appropriate case in which to consider whether the attorney-client privilege should be extended in the manner petitioner urges. The court of appeals expressly held that petitioner had failed to show a "strong probability" that disclosure of the client's identity would implicate him in the very criminal activity for which legal advice was sought (Pet. App. A2). Thus, even if such an exception were to be recognized, it would, under the court of appeals' decision, be inapplicable in this case.

We note as well that it was petitioner who sought to invoke the aid of the courts to require the government to turn over to him the $150,000 in currency and to recover damages. In such a case, it is entirely reasonable for the court and the United States, the opposing party, to have access to the information underlying petitioner's assertion of an interest in the property seized. That information would have provided some basis for determining whether the currency in fact was intended by a client as the payment to petitioner of a bona fide fee and that it was not the proceeds of illegal drug transactions that were in any event subject to forfeiture.

Surely, if a person sent $150,000 to a doctor or accountant in similar circumstances, neither would be privileged from disclosing that person's identity. The result should be no different here simply because the envelopes containing the currency were addressed to a lawyer. See, *e.g.*, *In re January 1976 Grand Jury (Genson)*, 534 F.2d 719, 727-729 (7th Cir. 1976); *United States* v. *Jeffers*, 532 F.2d 1101, 1114-1115 (7th Cir. 1976), vacated in part on other grounds 432 U.S. 137 (1977). If the result were otherwise, the attorney-client privilege would be converted from a protection against government intrusion and oppression into an instrument to facilitate the commission of crimes. Participants in narcotics distribution schemes would thereby be

given a powerful incentive to transmit the monies involved in their schemes by addressing them to an attorney, so that if the transmittal is detected by law enforcement authorities, the participants could attempt to obstruct an investigation into the circumstances surrounding the transmittal and even seek to recover the money simply by invoking the attorney-client privilege. The nature of the transmittal at issue here indicates that these concerns are present in this very case. See pages 2-4, 5-7, *supra*. These considerations weigh heavily against extension of the attorney-client privilege to protect the client's identity here.

3. Petitioner also contends (Pet. 22-28) that the district court erred in denying his motion for "return" of the currency because the DEA agents' seizure of the currency violated the Fourth Amendment. The district court, however, did not finally resolve this issue. It simply denied petitioner's motion at an interlocutory stage and subsequently dismissed the entire suit because petitioner refused to disclose the identity of the client. The court of appeals affirmed the dismissal on the latter ground. The Fourth Amendment issue therefore is not properly before the Court, and there is not a complete record or findings on which the Court could adequately review that issue.

Moreover, even if petitioner were correct that the currency was seized in violation of his Fourth Amendment rights, the currency nevertheless remained subject to forfeiture pursuant to 21 U.S.C. 881 as the proceeds of illegal narcotics transactions. *Dodge* v. *United States*, 272 U.S. 530, 532 (1926); *Taylor* v. *United States*, 44 U.S. (3 How.) 197, 205 (1845); *Wood* v. *United States*, 41 U.S. (16 Pet.) 342, 358-359 (1842); *United States* v. *An Article of Device Theramatic*, 715 F.2d 1339, 1341 (9th Cir. 1983), cert. denied, No. 83-965 (Feb. 21, 1984); *United States* v. *One 1977 Mercedes Benz*, 708 F.2d 444, 450-451 (9th Cir. 1983), cert. denied, No. 83-5663 (Jan. 16, 1984); *United States* v.

Eighty-Eight Thousand, Five Hundred Dollars, 671 F.2d 293, 297 (8th Cir. 1982).[7] And since the Ninth Circuit's decision in this case, the district court in fact has ordered the currency forfeited to the United States. Petitioner's argument that the property should be "returned" to him in this suit because of an alleged Fourth Amendment violation therefore is both without merit and effectively moot.

In any event, petitioner's various contentions do not on the present record establish a violation of his Fourth Amendment rights. Petitioner first objects (Pet. 23-24) to the DEA agents' conduct when they stopped and questioned Valencia at the Los Angeles airport. However, petitioner's own personal liberty was not affected, and he therefore has no "standing" to object to any violation of Valencia's Fourth Amendment rights in that encounter. *INS* v. *Delgado*, No. 82-1271 (Apr. 17, 1984), slip op. 10; *Rakas* v. *Illinois*, 439 U.S. 128, 133-140 (1978). The DEA agents' encounter with Valencia in fact appears to have been entirely proper. Law enforcement officers do not violate the Fourth Amendment by approaching a person in a public place, asking him if he is willing to answer certain questions, and then asking the questions if he is willing to listen. *INS* v. *Delgado*, slip op. 5-6, 10; *Florida* v. *Royer*, No. 80-2146 (Mar. 23, 1983), slip op. 5-6 (plurality opinion). Before Valencia went to the DEA office and while he was still in the public part of the terminal (compare *Florida* v. *Royer*, slip op. 2-3, 10-11), Valencia agreed to open the briefcase and consented to the agents' opening of the envelopes exposed inside, after being assured by the agents that he was not required to consent to the search of the briefcase. Marcello

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[7]While the exclusionary rule applies to forfeiture proceedings, it governs only the admissibility of evidence therein and does not bar the forfeiture proceeding itself even if the res was unlawfully seized. Cf. *Frisbie* v. *Collins*, 342 U.S. 519 (1952).

Dep. 25-26, 28, 29-30. It thus appears that the entire encounter with Valencia was consensual, and that a brief detention was lawful in any event because of the agents' reasonable suspicion that Valencia was a drug courier. See *Florida* v. *Royer*, slip op. 6-7, 10-14; *United States* v. *Mendenhall*, 446 U.S. 544, 557-558 (1980); cf. *INS* v. *Delgado*, slip op. 6, 9-10.

Petitioner further contends (Pet. 25) that Valencia's consent to inspection of the briefcase and envelopes was not validly obtained. To the extent petitioner argues that the consent was the fruit of an unconstitutional detention of Valencia (see *Florida* v. *Royer*, slip op. 9; *United States* v. *Mendenhall*, 446 U.S. at 557-558), that argument must be rejected because, as we have already explained, (1) petitioner's rights were not implicated by the alleged violation of Valencia's Fourth Amendment rights, so he may not demand "return" of the currency on the ground that Valencia's consent to its seizure was the fruit of such a violation, and (2) there is in any event no indication that the agents' detention of Valencia was unlawful under the Fourth Amendment. Nor is there any independent reason to believe that Valencia's consent to the search was not freely and voluntarily given. Compare *United States* v. *Mendenhall*, 446 U.S. at 558-559.[8]

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[8]Petitioner contends (Pet. 26) that when the agents found money, not drugs, in the envelopes, they had no right to retain the currency because, he maintains, they did not have the "slightest ground" for suspecting it was related to illegal activity. This argument is without merit. The substantial amount of the currency, the suspicious way in which it was packaged, Valencia's Colombian citizenship and residence in Miami, his conduct at the airport, and his description of how he was retained to deliver the money all indicated criminal activity. What is more, Valencia himself told the DEA agents that given the amount of money, it must be drug-related or for some other illegal purpose. In addition, when petitioner arrived at the airport, he indicated that the amount of money could be as much as $650,000 — an extraordinarily large amount for a

Finally, petitioner contends (Pet. 24-25) that Valencia's consent to search the contents of the envelopes was invalid, even if voluntary and untainted by a Fourth Amendment violation, because Valencia was not authorized to consent to that search. Since the money had apparently been entrusted to Valencia by the sender and had not yet been delivered to petitioner, Valencia, as the person then in possession, presumably could consent to the search (at least if he were not himself prohibited from examining the contents of the envelopes). The record does not fully reflect whether Valencia had the actual or apparent authority of the sender to consent to the search — a point petitioner could not readily establish while he persisted in refusing to identify his "client." Moreover, petitioner himself told the agents that he did not want them to give him the money when they asked him at the airport. See page 4, *supra*.

In any event, as we have said, petitioner would not be entitled to the currency even if he could establish a Fourth Amendment violation, since it was subject to forfeiture anyway. There accordingly is no occasion for the Court to review petitioner's fact-bound Fourth Amendment claim.

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retainer — and stated that he did not want the money back if it were "illegal." See page 4 note 2, *supra*. In these circumstances, the DEA agents had every reason to believe that the money was drug-related and every justification for retaining it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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